

CAUSE NO. 05-CV-0337

MIGUEL ARENAZAS, et al.	§	IN THE DISTRICT COURT OF
	§	
vs.	§	
	§	
BP PRODUCTS NORTH AMERICA,	§	GALVESTON COUNTY, TEXAS
INC., B.P. CORPORATION NORTH	§	
AMERICA INC., DON PARUS, AND JE	§	
MERIT CONSTRUCTION, INC.	§	212 <sup>TH</sup> JUDICIAL DISTRICT

**ORDER REGARDING BROADCASTING AND PHOTOGRAPHING OF TRIAL**

The Court has read the briefs and law supplied by the attorneys as well as reviewed the materials supplied and considered the arguments of counsel. The Court has also considered the prior experience of this court with CourtTV and other broadcasting companies covering a trial garnering the attention of national and international media. The court has considered all of the concerns expressed at the hearing as well as others not expressed and the applicable law.

The primary fears expressed about allowing televised coverage of the trial on TV and on the internet are future jurors being prejudiced and attorneys being tempted to grandstand for the cameras. Additionally the Court has considered the risk of witnesses violating the rules against learning what other witnesses said in court.

Potential jurors in future trials may learn of the proceedings from the print media, internet, advertising campaigns or the news magazine programs regardless of whether the proceedings are televised.

The concerns about jurors in future trials having their minds made up by watching gavel to gavel coverage on TV or the internet can be remedied at the voir dire of those trials just as they would for the those jurors who had been reading newspapers, magazines, websites , blogs or watching the evening news or news magazine programs on TV. The lawyers for BP listed the temptation for lawyers to grandstand in front of the cameras as a reason to ban the cameras. The attorneys in this case are all seasoned professionals. The Court does not believe the presence of cameras will have any affect on the tendency of any of these attorneys to grandstand

The most troublesome concern has been that of witnesses being able to violate the court's anticipated rules against exposure to the testimony of other witnesses. There is always the chance in any trial that witnesses will violate the rules by watching news programs or reading print media or doing research on the internet or talking to other witnesses or persons who sat through the testimony.

This concern is much more problematic in criminal than civil trials. Most of the testimony in civil trials has been memorialized in transcribed or videotaped depositions or written discovery long before the civil trial ever begins. That is true in this case. Additionally in this case many witness statements have been taken in the investigations being conducted by federal agencies and the Baker panel.

Experts and parties in the litigation are generally allowed to remain present in the courtroom and listen and watch as others testify.

In criminal trials absent a confession or statement given to the police the witness is generally testifying under oath for the first time during the trial or pretrial hearings. In trying to decide whether to allow media coverage the Court weighed the first amendment rights of the public to know what happens in court against the rights of the litigants to due process.

Weeks prior to the hearing the Court informed the attorneys for the parties that if there were any objections to the televising of the trial then a hearing would be had and evidence would be needed to show a compelling reason not to televise *in this particular case*. The Court emphasized several times that general complaints about the televising of trial would not be adequate in light of case law regarding the access or prohibiting of cameras in the courtroom.

The Court repeatedly asked the attorneys objecting to the televising of this trial to state the compelling reasons not to televise *in this particular case*. No answers were given other than to reiterate general objections to televising civil trials. There was a mention at the beginning of the hearing and in BP's written motion of tainting future jury pools since there are likely going to be more trials with the same defendants but different plaintiffs occurring out of the March 2005 explosion.

The Court considered allowing the televising of only the opening statements, closing arguments and verdict along with still photography to reduce the risk of the problems with jurors and witnesses watching what they are not supposed to view or hear. That is exactly what occurred in *The State of Texas v. Robert Durst* where gavel to gavel coverage was requested by 48Hours and CBS tried by this Court in 200

That was a criminal trial where other than witness statements to the police there was very little testimony memorialized prior to trial. There were a few pretrial hearings where small portions of testimony were transcribed as well as one short deposition.

In the prior case the decision not to allow the televising of the witness testimony was based on concerns about a witness having hired publicity agent. Interest had been expressed about obtaining movie rights.

Those were the compelling reasons to exclude the televised coverage of that portion of the trial. There has been no evidence that those reasons exist in this case.

After careful consideration of everything presented by all attorneys for the parties and the media in court and since the hearing the Court finds that the due process rights of the litigants will not be adversely affected by the gavel to gavel coverage of the trial.

The Court has heard no reasons compelling or otherwise to exclude still photography other than BP's assertions that Rule 18c prohibits such coverage without consent of all parties and witnesses.

There has been a great deal of interest expressed in watching this trial by attorneys handling other claims, media, BP employees, union representatives, federal agencies, environmental groups and others in the petrochemical and corporate fields. Allowing these persons to monitor the proceedings without having to be in the courthouse will greatly reduce the crowding and disruptions to the other business being conducted in the courthouse.

Finally the Court considered the arguments of counsel regarding whether and when the Texas Supreme Court allows televised coverage of civil trials pursuant to Texas Rule of Civil Procedure 18c. BP's asserts that 18c absolutely prohibits still or moving photography absent consent by all. IBCTV, the Houston Chronicle, the Galveston County Daily News and the CourtTV lawyers argue that obtaining such consent is only one of two circumstances where such coverage is allowed. TRCP18c (a) allows a trial court to permit broadcasting and photographing in accordance with guidelines promulgated by the Texas Supreme Court.

The Texas Supreme Court has not published rules for all civil trial courts in Texas to abide by when broadcasting or photographing trials. Yet many counties including Harris County have local standing rules governing the broadcasting and televising of civil trials.

Those local rules have been approved by the Texas Supreme Court. Local rules in Texas district courts are not considered to be in effect until they are approved by the Texas Supreme Court. The Texas Supreme Court has approved these local rules in spite of the fact that they themselves have not written rules for all courts in Texas regarding cameras in the courtroom.

BP's attorneys make a very literal interpretation of 18c. The attorneys for the media interpret 18c in light of actions and decisions of the Texas Supreme Court in approving local rules allowing for broadcast and photographing without consent of all parties and witnesses.

BP's position depends on the word promulgate being defined as "to make", as in "to make" themselves only. Webster's defines promulgate as "1: to make known by open declaration or 2a: to make known or public the terms of (a proposed law) or b: to put (a law) into action or force". Black's Law Dictionary defines the word as "to publish: to announce officially: to make public as important or obligatory. The formal act of announcing a statute or rule of court."

Neither definition limits the use of the word promulgate to mean only the author of the statute or rule can promulgate it. The act of the Texas Supreme Court in approving local rules is the act of promulgating.

The Court's decision is as follows:

Gavel to gavel coverage will be allowed beginning with opening statements through the verdict.

Court TV will be the pool for other broadcast companies wanting to televise the trial on TV or the internet.

Still photography will also be allowed in the courtroom from opening statements through the verdict. Pool arrangements will be determined after further consultation with the interested companies.

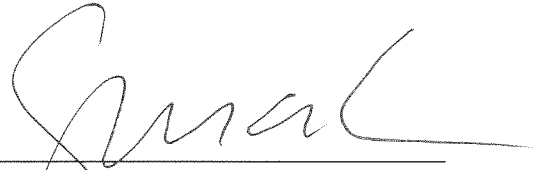
The Harris County Media Rules of the District Courts-Civil Trial Division for Televising Civil Trials will govern. If the Texas Supreme Court sets out rules applicable to civil trials thorough out Texas in the meantime those rules will also govern.

There will be more guidelines set out by this court to be determined after consultation with media sources and Court personnel and facilities managers.

There will be ABSOLUTELY NO FILMING or PHOTOGRAPHING or DRAWING of JURORS or POTENTIAL JURORS. There will be no coverage in any way that reveals the identity of a juror to the public until further notice by this Court. A violation of this will result in contempt of Court and possible incarceration.

Anyone wanting to participate in any pool in this case will sign an agreement to abide by this and all other rules and guidelines of this court.

Violation of the procedures and rules set out and adopted by this Court to govern the coverage of this case may result in the expulsion from the courtroom of both the person violating said rules and anyone else working for the same company.

A handwritten signature in black ink, appearing to read 'Susan', written over a horizontal line.

Judge Susan Criss  
212<sup>th</sup> District Court